In the High Court of Judicature at Madras

Dated:23.01.2007

Coram

The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal No.218 OF 1997

1. Sartaj Begum
2. Pest Control (South India)
3. Shahul Hameed
4. O.M.Famanuddeen (died)
5. Kasim
6. Jaffer
7. Umar Ghias
8. Kamila
9. Minor Saddam Hussain
10. Minor Haja Mohideen

Minor appellants 9 and 10 represented by mother and guardian 8th appellant ..Appellants [Defendants 1 to 7 and third party LRs of deceased 4th Defendant].

v

Ummai Kulsum Begum Saheba Wakf by Muthavalli Saifuddin Mohamed Yacub ..Respondent. [Plaintiff].

Second appeal filed under Section 100 of CPC against the judgment and decree dated 31.10.1995 made in A.S.No.114 of 1995 on the file of VI Addl. Judge, City Civil Court, Madras confirming the decree and Judgment dated 12.01.1994 in O.S.No.3914 of 1989 on the file of VIII Assistant Judge, City Civil Court, Madras.

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For Appellants : Mr.J.Jayendrakrishnan
For Respondent : Mr.S.I.Samiullah.

JUDGMENT

This appeal has been preferred against the Judgment and decree in A.S.No.114 of 1995 on the file of VI Additional Judge, City Civil Court,

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Chennai. The defendants, who have lost their defence before the Courts below, are the appellants herein.

2. The averments in the plaint in brief sans irrelevant particulars are as follows:
The suit is for recovery of possession, for recovery of arrears of rent to the tune of Rs. 5,700/- and also for future damages at the rate of Rs.2,000/- per mensum. The plaintiff is a public Wakf Board as per the registered trust deed of the year 1955. As per the registered trust deed, the plaintiff has provided food for the covenant and also to provide educational facility to the poor and down-trodden. The first defendant is residing in the house bearing door No.319, T.T. K.Road from 1.2.1979 for a monthly rent of Rs.300/- . The first defendant is the tenant under the plaintiff, Wakf Board. The said lease deed was executed by the first defendant for 33 months. As per the terms of the lease deed, the plaintiff Wakf board is entitled to enhance the monthly rent after the expiry of the above said lease period of 33 months. The first defendant has failed to pay the monthly rent in spite of repeated notices sent by the plaintiff. To the surprise of the plaintiff, the first defendant has sub-let the premises in favour of defendants 2 to 7. The first defendant is getting Rs.2,000/- per mensum towards rent from defendants 2 to 7. Except, one of the sub tenants, the other sub tenants are doing business in the said premises. Only one sub tenant is residing in the said premises . The first defendant also sub let the premises leased out to him. The company by name "Pest Control(South India) is functioning in the place let out to the first defendant . Even in the telephone directory, it is shown that the said company is doing business in the name of the first defendant. The first defendant has failed to pay the rent from September 1987 to March 1989 for the said premises which comes to Rs.5,700/-(Rs 300 x 19). Since the first defendant has failed to pay the arrears of rent, the plaintiff issued a registered notice on 5.10.1987 and subsequently a lawyer's notice on 29.5.1988. Under the said notice, the plaintiff has given time till 3.3.1989 for the first defendant to vacate the premises. On 14.3.1989 the first defendant had sent a crossed demand draft for Rs.5,400/-. The plaintiff has returned the said demand draft. As per G.O.No.2000 dated 16.8.1976, the suit is maintainable. Hence the plaintiff has filed this suit.

3. The first defendant in his written statement would contend that the plaintiff Wakf Board is not a public Wakf Board. It is a private Wakf Board. The Muthavalli of the Wakf is not competent to file the suit on behalf of the plaintiff Wakf. The plaint schedule property is the plaintiff's ancestral property which was partitioned under the partition deed of the year 1955. So the suit property is not a public property. The first defendant is willing to enhance the rent as per the agreement dated 1.2.1979. As per the terms of the agreement dated 1.2.1979, the first defendant has got the right to sub-let the property. The sub tenants are residing in the suit property and they are also conducting business in the suit property. One A.H.Basha is not doing any business in the property.

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This defendant is not getting any rent much less Rs.2000/- from the sub tenants as alleged in the plaint. Since the plaintiff's Muthavalli is staying at Hyderabad, his brother is collecting the rent from the suit property. Since the said Muthavalli has failed to collect the rent from the first defendant, he deposited the same into the Court. Even after deposit of rent by the first defendant, he received notice from the plaintiff, which necessitated this defendant to file R.C.O.P.No.928 of 1989 before the Court of Small Causes, Chennai The demand draft of Rs.5400/- sent by this defendant to the plaintiff was returned to this defendant by the plaintiff. As per G.O.No.2000 dated 16.8.1976, the suit is not maintainable. This defendant and her husband A.H.Basha , have spent a sum of Rs.25,000/- in the suit property and have constructed building in the suit property. The erstwhile Muthavalli who filed earlier suit O.S.No.10143 of 1976 against A.H.Basha, the former tenant and after the demise of the said Muthavalli, the plaintiff has not impleaded the present Muthavalli as Legal Representative of the former Muthavalli, had withdrawn the said suit. If the property is partitioned then the brothers of the deceased Muthavalli are also entitled to a share in the suit property. Hence the plaintiff purposely omitted to include the sister of the erstwhile Muthavalli. Hence the suit is bad for non-joinder of necessary parties. No proper Court fee has been paid. Hence the suit is liable to be dismissed .

4. In the additional written statement, the first defendant would contend that Sabaiyudeen Mohamath Yukub ought not to have been impleaded as the representative of Muthavalli. The suit property is not a public Wakf. Sabaiyudeen Mohamath Yukub is a necessary party to the suit. The legal representative of the deceased Muthavalli Vallima Begum is necessary party to the suit.

5. Defendants 2 to 7 remained exparte.

6. On the above pleadings, the trial Court had framed six issues and two additional issues for trial. On the side of the plaintiff, P.W1 was examined and Exs P1 to P21 were marked. On the side of the defendants D.W.1 was examined and Exs B1 to B13 were marked.

7. After going through the oral and documentary evidence, the learned trial Judge has come to a conclusion that the plaintiff is entitled to the relief asked for in the plaint and accordingly decreed the suit with costs, giving three months time for the defendants to vacate the premises. Aggrieved by the Judgement of the learned trial Judge, the defendants have preferred A.S.No.114 of 1995 before VIII Assistant Judge, City Civil Court, Chennai, who after due deliberation, has dismissed the appeal with costs. Aggrieved by the findings of the learned first appellate Judge, the defendants have preferred this second appeal.

8. The substantial questions of law involved in this appeal are

" Whether the plaintiff is a trust exempted under G.O.2000, Home dated 16.8.1976?

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2. Whether there has been a valid termination of tenancy under Transfer of Property Act?
3. Whether City Civil Court had Jurisdiction to entertain and adjudicate the suit?

9. The Points:

The only point involved in this appeal is whether the plaintiff is a public trust or a private trust and as per G.O.No.2000 Home dated 16.8.1976 exempted from the jurisdiction of Court of Small Causes. The defence taken by the first defendant in the suit is that the plaintiff is a private Wakf and that the case filed before the City Civil Court is not maintainable and that the exemption given under G.O.No.2000 Home dated 16.8.1976 cannot be extended to the plaintiff, a private trust. This contention of the first defendant was not accepted by the first appellate Court, on the basis of Ex A4 Government Notification No.20 A dated 20.5.1995. Under the above said Government Notification Ex A4, the Government has notified the list of existing public Wakf as per Section 5 (2) of Muslim Wakf Act 1954(Central Act 29/1954). A perusal of Ex A4 will go to show that at Serial No.140, the plaint schedule property Old No.123, Mowbrays Road, Royapettah is shown as a public wakf property. So Ex A4 cuts at the root of the defendants' case. The learned first appellate Judge on the basis of Ex A4 has come to a correct conclusion that the plaint schedule property being a public wakf property, it has been exempted from the jurisdiction of Court of Small Causes as per G.o.2000 Home dated 16.8.1976. Exs A3 and A9 letters from the Secretary, Tamil Nadu Wakf Board, also prove that the suit property is classified as Public Wakf property which will come under the purview of G.O.No.2000 Home dated 16.8.1976 and as such the Wakf Board is exempted under the purview of Tamil Nadu Buildings(Lease and Rent Control) Act 1960. Further, the defendants are not denying the tenancy and also the arrears of rent. Under such circumstances, I do not find any reason to interfere with the well considered Judgment of the learned VI Additional Judge, City Civil Court, Chennai in A.S.No.114 of 1995. Points are answered accordingly.

10. In the result, the appeal is dismissed confirming the decree and Judgment in A.S.No.114 of 1995 on the file of the Court of VI Additional Judge, City Civl Court, Chennai. In the circumstances of the case, there is no order as to costs.

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Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

sg

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To

1.The Registrar,
City Civil Court,
Madras.

2. The Section Officer, VR Section,
High Court, Madras.

+ 1 CC To Mr. S.I.Samiullah, Advocate SR NO.4142

+ 1 CC To Mr. Hajee P.K.Jamal Mohammed, Advocate SR NO.4192

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